

UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO

SENTENCING MINUTE SHEET

CR No.	08-1669			USA vs.	McKenzie		
Date:	9/7/12			Name of Deft:	Richard Anthony McKenzie		
Before the Honorable				James O. Browning			
Time In/Out:	9:05 a.m./10:24 a.m.			Total Time in Court:	1:19		
Clerk:	K'Aun Wild			Court Reporter:	Paul Baca		
AUSA:	Samuel Hurtado			Defendant's Counsel:	James Baiaamonte (Appointed)		
Sentencing in:	ABQ			Interpreter:	N/A		
Probation Officer:	Luis Zuniga			Sworn?	<input type="checkbox"/>	Yes	<input type="checkbox"/> No
Convicted on:	<input type="checkbox"/>	Plea	<input checked="" type="checkbox"/> Verdict	As to:	<input type="checkbox"/>	Information	<input checked="" type="checkbox"/> Indictment
Plea:	<input type="checkbox"/>	Accepted	<input type="checkbox"/> Not Accepted	Adjudged/Found Guilty on Counts:			
Plea Agreement:	<input type="checkbox"/>	Accepted	<input type="checkbox"/> Not Accepted	No Plea Agreement	Comments:		
Date of Plea/Verdict:	April 12, 2011			PSR:	<input type="checkbox"/>	Not Disputed	<input checked="" type="checkbox"/> Disputed
PSR:	<input checked="" type="checkbox"/>	Court Reviewed PSR Factual Findings and USSG Calculations and Adopts as Its Own		Evidentiary Hearing:	<input checked="" type="checkbox"/>	Not Needed	<input type="checkbox"/> Needed
Exceptions to PSR:	see below						

SENTENCE IMPOSED

Imprisonment (BOP): 262 months

Supervised Release:	4 years	Probation:		500-Hour Drug Program
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SPECIAL CONDITIONS OF SUPERVISION

<input type="checkbox"/>	No re-entry without legal authorization	<input type="checkbox"/>	Home confinement for _____ months _____ days
<input type="checkbox"/>	Comply with ICE laws and regulations	<input type="checkbox"/>	Community service for _____ months _____ days
<input type="checkbox"/>	ICE to begin removal immediately or during sentence	<input type="checkbox"/>	Reside halfway house _____ months _____ days
<input checked="" type="checkbox"/>	Participate in outpatient substance abuse program (no residential placement)	<input type="checkbox"/>	Register as sex offender
<input checked="" type="checkbox"/>	Participate in mental health program (no residential placement)	<input type="checkbox"/>	Participate in sex offender treatment program
<input checked="" type="checkbox"/>	No alcohol/liquor establishments	<input type="checkbox"/>	Possess no sexual material
<input checked="" type="checkbox"/>	Submit to search of person/property	<input type="checkbox"/>	No computer with access to online services

No contact with victim(s) and/or co-Defendant(s)		No contact with children under 18 years	
No entering, or loitering near, victim's		No volunteering where children supervised	
Provide financial information		Restricted from occupation with access to	
Grant limited waiver of confidentiality		No loitering within 100 feet of school yards	
OTHER:			
Fine: \$ 0.00		Restitution: \$ 0.00	
SPA: \$ 100.00 (\$100 as to each Count)		Payment Schedule:	X Due Immediately <input type="checkbox"/> Waived
OTHER:			
X	Advised of Right to Appeal	Waived Appeal Rights per Plea Agreement	
X	Held in Custody	Voluntary Surrender	
X	Recommended place(s) of incarceration:	Court recommends FCI Fort Dix, NJ or FCI Fairmont, NJ, if eligible.	
	Dismissed Counts:		
OTHER COMMENTS:		<p>Court informs have received motion to set aside verdict from Defendant – asks if defense counsel has received/read? Defense counsel informs have only recently received – in process of reviewing; Govt. informs do not need continuance to respond to motion and would like to do so orally – argues in opposition to same, moves to strike motion given was filed by Defendant and not defense counsel; upon Court's inquiry, Defendant argues in support of motion; defense counsel addresses Court regarding motion; Govt. addresses Court further regarding motion; Defendant argues further in support of motion; defense counsel informs has now reviewed entire filing and do not believe there is anything in it that requires this hearing to be vacated – believes can proceed to sentencing; Court denies motion. Defense counsel argues in support of objection as to over-representation of criminal history category and requests sentence to mandatory minimum of 5 years – addresses Court regarding discussions with Mr. Bowles regarding his possible appearance in this case and understands that he will not be appearing; Court informs CRD received calls from Defendant's family member yesterday regarding same and CRD talked with Mr. Crow last night – he told her that their firm would not be entering an appearance in this case.</p> <p>OBJECTION TO PARA. 41</p> <p>Court takes up objection as to para. 41 as to the amount of drug sold and assertion that the Defendant should not have been charged with a drug trafficking offense; defense counsel argues in support of same; Defendant addresses Court re: same – references Indictment and PSR in the case giving rise to this objection; USPO informs has documentation to support charge/conviction – Court request USPO show documents to Defendant and instructs CRD to attach hereto as Ex. A; Govt. argues in response in opposition to same; Defendant addresses Court further re: same; USPO addresses Court further re: same and tenders additional documentation re: same; Court instructs CRD to attach that hereto as Ex. B; Defendant addresses Court</p>	

further re: same; USPO addresses Court further re: same and tenders additional documentation re: same; Court instructs CRD to attach hereto as Ex. C; Court orders the following sentence removed from para. 41: "According to the Indictment, on or about May 5, 1994." and overrules objection to para. 41.

OBJECTION TO PARA. 42

Defense counsel informs has no further argument re: para. 42; Govt. has no argument, either; Court overrules objection re: same.

OBJECTION AS TO ACCEPTANCE OF RESPONSIBILITY

Defense counsel argues as to non-applicability of acceptance of responsibility – do not believe applicable, but is raised at Defendant's request; Govt. argues in response in opposition to same; defense counsel has no further argument re: same; Defendant addresses Court re: same; Court overrules objection re: same.

***KIMBROUGH* ARGUMENT RE: ENHANCEMENT**

Defense counsel argues in support of *Kimbrough* re: enhancement; defense counsel informs has no further argument re: same – requests recommendation to facility in NY or NJ. Defendant allocutes – has additional objection to PSR re: analysis of robbery. Govt. addresses Court. Court declines to vary. Court provides findings to support imposition of special conditions. USPO informs FCI Fort Dix, NJ or FCI Fairmont, NJ, would be appropriate facilities; Court recommends same. Defense requests court appoint counsel to assist with 2255; Court explains will need to submit request through Clerk's office – file motion for counsel when file 2255 case; defense counsel asks Court if there is a basis for Defendant to file 2255? Court declines to provide answer – explains how process works; defense counsel addresses Court further re: same.